IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.601 of 2007

Murugan .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai, Egmore
   Chennai - 600 008. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus calling for the records pertaining to the detenu in proceedings No.346/BDFGISSV/2006 dt.20.12.2006 passed by the second respondent herein and to set aside the same and direct the respondent to produce the petitioner now detained at Central Prison, Puzhal, Chennai, before this Court and to set him at liberty.

For Petitioner : Mr.S.Samuel Rajapandian
For Respondents : Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner calls in question legality of the order of detention 20.12.2006 passed by the second respondent ordering his detention under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (in short "the Act") branding him as a "Goonda".

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2. The order of detention dated 20.12.2006 was passed on the basis of ground case in Crime No.1815 of 2006 for alleged commission of offences under Sections 392, 397 and 506(ii) of the Indian Penal Code. The allegation against the detenu was that on 11.12.2006 at about 4.30 p.m., when one Deva Anandan, was returning from work at the junction of Madhavaram High Road and Pallavan Road, the petitioner and one Durai wrongfully restrained Deva Anandan at the point of knife and asked him what was in his pocket. The petitioner and his associate kicked Deva Anandan in his stomach, beat him over his chest and cheek. The associate of the detenu inserted his hand into the shirt pocket of Deva Anandan and took away Rs.1000/-. The detenu snatched the wrist watch and Nokia Cell phone of Deva Anandan. Noticing that the detenu and his associate are escaping, Deva Anandan raised huse and cry and chased them. The public nearby tried to apprehend them on the spot, but the detenu and his associate threatened them at the point of knife, pelted stones. The public ran to safer places out of fear of danger to their lives and properties, and thus the detenu and his associate created terror and panic at the spot. That apart, the detaining authority also took note of the ten adverse cases pending against the detenu in Crime Nos.101/2002, 292/2002, 3031/2004, 3032/2004, 663/2006, 1814/2006, 1791/2006, 1800/2006, 1374/2006 and 1805/2006 for the offences punishable under Sections 379, 392, 506(ii) of the Indian Penal Code. The detaining authority having satisfied that the detenu is habitually committing the crime and his activities are prejudicial to maintenance of public order, passed the impugned order branding him as a "Goonda".

3. The main contention of the learned counsel for the petitioner is that even though the detenu was arrested and remanded in Crime Nos.1814/2006, 1791/2006, 1800/2006, 1374/2006 and 1805/2006 as well as in the ground case in Crime No.1815 of 2007, the detaining authority while considering the real possibility of the detenu coming out on bail has given consideration only to Crime No.1815 of 2007 and not to the adverse cases in which the detenu was remanded. It is further submitted that remand order passed in Crime Nos.1814/2006, 1791/2006, 1800/2006, 1374/2006 and 1805/2006 were not furnished.

4. We have perused the records produced before us. A perusal of the records would disclose that the detenu was arrested and remanded in Crime Nos.1814/2006, 1791/2006, 1800/2006, 1374/2006 and 1805/2006 as well as in the ground case in Crime No.1815 of 2007. But, the detaining authority while considering the real possibility of the detenu coming out on bail has given

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consideration only to Crime No.1815 of 2007 and not applied his mind to the adverse cases in Crime Nos.1814/2006, 1791/2006, 1800/2006, 1374/2006 and 1805/2006, in which the detenu was remanded, and moreover, the remand orders passed in Crime Nos.1814/2006, 1791/2006, 1800/2006, 1374/2006 and 1805/2006 were also not furnished.

5. The non furnishing of the remand order in Crime Nos.1814/2006, 1791/2006, 1800/2006, 1374/2006 and 1805/2006 and non application of mind by the detaining authority in not considering that the detenu was also arrested in Crime Nos.1814/2006, 1791/2006, 1800/2006, 1374/2006 and 1805/2006 vitiates the order of detention.

For the aforesaid reason, we are inclined to allow this petition. The order of detention dated 20.12.2006 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1. The Secretary to Government
   Prohibition and Excise Department
   State of Tamil Nadu
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai, Egmore
   Chennai - 600 008.

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3.The Superintendent,
Central Prison,Puzhal, Chennai.

4.The Joint Secretary to Govt.
Public (Law and Order) Fort St.George,
Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Samuel Rajapandian, Advocate Sr 53528

JSK (CO)
km/12.9.

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